

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.MC.No. 289 of 2007()

CC.193/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, CHITTUR
CRIME NO.54/05 OF PUDUNAGARAM POLICE STATION
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PETITIONER: ACCUSED

1. BABU, S/O.CHAMUNNY, AGED 30 YEARS,
ANGOTIL VEEDU, KUNNAMPULLY, KUNISSERY,
ALATHUR TALUK, PALAKKAD DISTRICT.
2. PRAKASAN, S/O.PONNUMANI, AGED 36 YEARS,
PALAKKALPARAMBU, KATTUSSERY, ALATHUR,
PALAKKAD.

BY ADV. SRLJOHNSON P.JOHN
SRI.BABY MATHEW

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. SUB INSPECTOR OF POLICE,
PUTHUNAGARAM POLICE STATION, PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRL.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 289 of 2007

Dated this the 6th day of February, 2007

ORDER

The petitioners are accused in a prosecution and they face allegations under Sections 420 and 506 r/w. 34 I.P.C. Cognizance has been taken on the basis of the final report submitted by the police after due investigation. Investigation commenced with a private complaint filed by the defacto complainant before the learned Magistrate, which was referred to the police under Section 156(3) Cr.P.C.

2. The crux of the allegations against the petitioners is that they induced the complainant and his brother to part with an amount of Rs.80,000/- each promising to make an employment VISA available to the complainant. VISA was not made available nor was the amount returned. When return of the amount was claimed, the complainant and his brother were allegedly intimidated. Thus the crux of the allegations is that false representations were made to the complainant and his brother to induce them to part with an amount of Rs. 80,000/-

with no intention whatsoever to make such VISA available to them. When the amount was demanded, they were intimidated also.

3. The petitioners have come to this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the prosecution initiated against them. What is the reason? The only contention is that the allegations raised are false. At this stage exercising jurisdiction under Section 482 Cr.P.C. this Court cannot certainly be expected to resolve the disputed questions of fact. It cannot be said that the allegations, if accepted, do not constitute any criminal offence.

4. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that in a case like the instant one, the petitioners must appear before the learned Magistrate and claim discharge/acquittal. If they claim discharge, the learned Magistrate must certainly consider such claim and take appropriate decision under Section 239/240 Cr.P.C.

5. The learned counsel for the petitioners submits that the petitioners are both employed abroad and great difficulties and inconvenience will have to be endured if their personal presence is insisted. It will not be

possible for them to appear before the learned Magistrate within a period of four months. The petitioners can appear before the learned Magistrate through their counsel and make this submission. The learned Magistrate must pass appropriate orders on such application. The mere fact that a warrant is pending cannot operate as a valid reason for the learned Magistrate not to consider such application.

6. This Crl.M.C. is hence dismissed with the above observations.

(R. BASANT)
Judge

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